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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	NO. D-4771
Against:)	
)	<u>DEFAULT DECISION</u>
DAVID VAN EVERY, M.D.)	
1175 E. Arrow Hwy)	[Gov. Code, § 11520]
Upland, CA 91786)	
)	
Physician's and Surgeon's)	
Certificate No. G-006368,)	
)	
<u>Respondent.</u>)	

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FINDINGS OF FACT

1. On or about June 11, 1992, complainant Kenneth Wagstaff, in his official capacity as Executive Director of the Medical Board of California, Division of Medical Quality, Department of Consumer Affairs, State of California, ("Board"), filed Accusation No. D-4771 against David Van Every, M.D., ("respondent"). A copy of the Accusation is attached hereto as Attachment "A" and hereby incorporated by reference as if fully set forth herein.

1 2. On or about 1960, the Board issued Physician and
2 Surgeon Certificate No. G006368 to respondent. The license, at
3 all times herein relevant, is and was in full force and effect.

4 3. On or about June 20, 1992, Vickey Boone, an
5 employee of the Medical Board of California, sent by certified
6 mail a copy of Accusation No. D-4771, Statement to Respondent,
7 Government Code sections 11507.5, 11507.6, and 11507.7, the
8 Notice of Defense form, and a Request for Discovery to
9 respondent's address of record with the Board which was and is
10 1175 E. Arrow Hwy, Upland, California 91786. The above
11 documents were received by respondent at the above address on
12 June 22, 1992, as evidenced by a signed domestic return receipt
13 which was received by the Medical Board on June 26, 1992.

14 4. On June 22, 1992, respondent returned a Notice of
15 Defense form to request a hearing in the above proceeding. A
16 copy of the Notice of Defense is attached hereto as Attachment
17 "B" and incorporated herein by reference.

18 5. On December 24, 1992, respondent sent a letter to
19 the Office of Administrative Hearings to inform Administrative
20 Law Judge Carolyn D. Magnuson, that Van Every had surrendered his
21 physician and surgeon certificate to the Medical Board on January
22 1, 1993, and closed his medical office. He has also surrendered
23 his DEA license to prescribe drugs. (A copy of the letter is
24 attached hereto as Attachment "C", and hereby incorporated by
25 reference as if fully set forth.)

26 6. On January 14, 1993, respondent sent a letter to
27 the Office of Administrative Hearings to state that he wants no

1 hearing, although he had requested one in June. (A copy of the
2 letter is attached hereto as Attachment "D", and hereby
3 incorporated by reference as if fully set forth.)

4 7. California Business and Professions Code section
5 118 provides, in pertinent part:

6 "(b) The suspension, expiration, or forfeiture by
7 operation of law of a license issued by a board in the
8 department, or its suspension, forfeiture, or
9 cancellation by order of the board or by order of a
10 court of law, or its surrender without the written
11 consent of the board, shall not, during any period in
12 which it may be renewed, restored, reissued, or
13 reinstated, deprive the board of its authority to
14 institute or continue a disciplinary proceeding against
15 the licensee upon any ground provided by law or to
16 enter an order suspending or revoking the license of
17 otherwise taking disciplinary action against the
18 license on any such ground."

19 8. California Government Code section 11506
20 provides, in pertinent part:

21 "(b) The respondent shall be entitled to a
22 hearing on the merits if he files a notice of defense,
23 and any such notice shall be deemed a specific denial
24 of all parts of the accusation not expressly admitted.
25 Failure to file such notice shall constitute a waiver
26 of respondent's right to a hearing, but the agency in
27 its discretion may nevertheless grant a hearing. . . ."

1 9. Respondent has expressly waived his right to a
2 hearing in these proceedings.

3 10. California Government Code section 11520 provides,
4 in pertinent part:

5 "(a) If the respondent fails to file a notice of
6 defense or to appear at the hearing, the agency may
7 take action based upon the respondent's express
8 admissions or upon other evidence and affidavits may be
9 used as evidence without any notice to respondent; . .
10 . ."

11 11. The Medical Board of California, Division of
12 Medical Quality, Department of Consumer Affairs, is authorized to
13 revoke respondent's license pursuant to the following provisions
14 of the California Business and Professions Code:

15 a. Section 2220 of California's Business and
16 Professions Code [hereinafter "the Code"] provides, in pertinent
17 part, that the Division of Medical Quality may take action
18 against all persons guilty of violating any of the provisions of
19 the Medical Practice Act, i.e., Chapter 5 of Division 2 of the
20 Code.

21 b. Section 2227 of the Code provides that a licensee
22 whose matter has been heard by the Division of Medical Quality,
23 by a medical quality review committee or a panel of such
24 committee, or by an administrative law judge, or whose default
25 has been entered, and who is found guilty may: (a) have his or
26 her certificate revoked upon order of the division; (b) have his
27 or her right to practice suspended for a period not to exceed one

1 year upon order of the division or a committee or panel thereof;
2 (c) be placed on probation upon order of the division or a
3 committee or panel thereof; (d) be publicly reprimanded by the
4 division or a committee or panel thereof; (e) have such other
5 action taken in relation to discipline as the division, a
6 committee or panel thereof, or an administrative law judge may
7 deem proper.

8 c. Section 2234 of the Medical Practice Act provides
9 that the Division of Medical Quality shall take action against
10 any licensee who is guilty of unprofessional conduct.
11 Subdivision (b) of the section provides that unprofessional
12 conduct includes gross negligence.

13 d. Subdivision (c) of section 2234 provides that the
14 unprofessional conduct for which the Division of Medical Quality
15 may discipline a licentiate also includes the commission of
16 repeated negligent acts.

17 e. Subdivision (d) of section 2234 provides that the
18 unprofessional conduct for which a licentiate may be disciplined
19 also includes incompetence.

20 f. Section 2242 of the Medical Practice Act provides
21 that prescribing, dispensing, or furnishing dangerous drugs as
22 defined in section 4211 of the Code, without a good faith prior
23 examination and medical indication therefor, constitutes
24 unprofessional conduct.

25 g. Section 726 of the Code essentially provides that
26 the commission of any act of sexual abuse or misconduct with a
27 patient in the course of one's practice constitutes

1 unprofessional conduct and grounds for disciplinary action
2 against a physician.

3 12. Pursuant to its authority under Government Code
4 section 11520, and based on the evidence before it, the Board
5 finds that the allegations, and each of them, contained in
6 Accusation No. D-4771 are true.

7 DETERMINATION OF ISSUES


8 1. Respondent is subject to disciplinary action
9 pursuant to sections 726, 2220, 2227, 2234, and 2242 of the
10 California Business and Professions Code by reason of the
11 Findings of Facts, Numbers 1 through 12, above.

12 ORDER OF THE BOARD

13 Physician and Surgeon Certificate Number G006368,
14 heretofore issued to respondent David Van Every, M.D., is hereby
15 revoked. An effective date of September 13, 1993, has
16 been assigned to this Order.

17 Pursuant to California Government Code section 11520,
18 subdivision (b), respondent is entitled to make any showing by
19 way of mitigation; however, such showing must be made in writing
20 to the Medical Board of California, 1426 Howe Avenue, Suite 100,
21 Sacramento, CA 95825, prior to the effective date of this
22 decision.

23 Made this 12th day of August, 1993.

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25 
26 THERESA CLAASSEN, Secretary-Treasurer
27 FOR THE BOARD

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 MICHAEL P. SIPE,
Deputy Attorney General
3 Department of Justice
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7 BEFORE THE
8 DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)
Against:)
12)

Case No. D- 4771

13 DAVID VAN EVERY, M.D.
1175 E. Arrow Hwy.
Upland, Ca 91786
14)

ACCUSATION

15 California Physician's and
Surgeon's Certificate
16 No. G006368
17)

Respondent.)
18

19 COMES NOW Complainant Kenneth J. Wagstaff, who as
20 causes for disciplinary action against the above-encaptioned
21 Respondent, charges and alleges as follows:

22 1. Complainant is the Executive Director of the
23 Medical Board of California, Department of Consumer Affairs,
24 State of California (hereinafter the "Board"), and makes and
25 files this Accusation solely in his official capacity as such and
26 not otherwise.

27 2. License Status. In or about 1960, David Van Every,

1 M.D., Respondent herein and hereinafter referred to as
2 "Respondent", was issued Physician's and Surgeon's Certificate
3 No. G006368 by the Board, authorizing him to practice medicine in
4 the State of California. At all times herein relevant said
5 Certificate was, and now is, in full force and effect.

6 3. Jurisdiction. Section 2220 of California's
7 Business and Professions Code [hereinafter, "the Code"] provides,
8 in pertinent part, that the Division of Medical Quality may take
9 action against all persons guilty of violating any of the
10 provisions of the Medical Practice Act, i.e., Chapter 5 of
11 Division 2 of the Code. Section 2227 of the Code provides that a
12 licensee whose matter has been heard by the Division of Medical
13 Quality, by a medical quality review committee or a panel of such
14 committee, or by an administrative law judge, or whose default
15 has been entered, and who is found guilty may: (a) have his or
16 her certificate revoked upon order of the division; (b) have his
17 or her right to practice suspended for a period not to exceed one
18 year upon order of the division or a committee or panel thereof;
19 (c) be placed on probation upon order of the division or a
20 committee or panel thereof; (d) be publicly reprimanded by the
21 division or a committee or panel thereof; (e) have such other
22 action taken in relation to discipline as the division, a
23 committee or panel thereof, or an administrative law judge may
24 deem proper.

25 4. Summary of Allegations. This Accusation is
26 brought, and Respondent is subject to disciplinary action,
27 pursuant to the following sections of the Medical Practice Act in

1 connection with his care and treatment of two patients,
2 Darlene C. and Kathy J.: § 2234 [Unprofessional Conduct] per
3 § 2234(b) [Gross Negligence], § 2234(c) [Repeated Negligent Acts]
4 § 2234(d) [Incompetence], and § 2242 [Furnishing Dangerous Drugs
5 Without A Good Faith Prior Medical Examination or Indication],
6 and § 725 of the Business and Professions Code [Act of Sexual
7 Misconduct or Abuse With A Patient].

8 ALLEGATIONS

9 5. Factual Predicate: Patient Darlene C.

10 A. Mrs. Darlene C. first saw Respondent in December
11 1979 for a PAP smear and breast examination. She made twelve
12 additional visits to him between then and June 30, 1987, two of
13 which were for PAP smears and breast examinations. Respondent's
14 records for these thirteen visits, as well as two that were
15 subsequently made on March 8 and 15, 1988, comprise but one page
16 of notes; the recorded notations for most visits is but one or
17 two lines and for five of them only the medication he prescribed
18 is recorded.

19 B. On June 30, 1987, Darlene C. again saw Respondent
20 for another PAP smear and a breast examination. Respondent found
21 a 1x1 cm. freely moveable cystic mass at the upper outer quadrant
22 of her right breast. He found no axillary masses. A mammogram
23 was performed the same day at the Inland Diagnostic Imaging
24 Medical Group. It was interpreted as showing "mammary dysplasia
25 [but] no evidence of a malignancy." However, in his report to
26 Respondent, the Radiologist did note that there was "some
27 axillary adenopathy" visible on the right side, and he

1 specifically advised that "a negative mammogram does not preclude
2 biopsy of a clinically suspicious abnormality."

3 C. Yet despite this, and despite clear evidence of a
4 suspicious lump in the breast, Respondent did nothing. He did
5 not make appropriate inquiries of Darlene C. (such as asking
6 about her family history for cancer) which might elucidate the
7 clinical situation. Nor did he discuss its possibilities, his
8 clinical assessment, or any needed diagnostic work-up or
9 therapeutic options with her. And he did not attempt to
10 appropriately follow-up the situation that was presented, or make
11 any attempt to secure consultation for the case.

12 D. Darlene C. returned to Respondent on March 8, 1988,
13 and he found the mass to be larger. A repeat mammogram,
14 performed at the San Antonio Community Hospital, revealed a 2.5
15 cm. large dominant mass in the right breast with poor margination
16 and malignant calcification. That as well as large lymph nodes
17 in the right axilla were consistent with malignancy. The
18 Radiologist's impression was a carcinoma of the right breast with
19 metastases to the right axillary nodes.

20 E. Respondent referred Mrs. C. to a surgeon
21 (H. Robinson, M.D.) and recorded a note for a call-back in three
22 months time to recheck her. However, he never saw Mrs. C. again.

23 F. On March 15, 1988, Mrs. C. underwent surgery at the
24 San Antonio Community Hospital. Dr. Robinson performed an
25 excisional breast biopsy with a frozen section examination, and
26 then a partial mastectomy with axillary dissection. The
27 postoperative diagnosis was a carcinoma of the right breast with

1 axillary metastases. There is no indication in Respondent's
2 records on Darlene C. regarding her post-operative course and
3 current clinical status.

4 6. Factual Predicate - Patient Kathy J.

5 A. Mrs. Kathy J. first visited Respondent on December
6 9, 1988, as a new patient. She had no complaints, but wanted a
7 prescription for Ortho-Novum 1/50 (#21) (which another physician
8 had previously prescribed), a prescription for a three months
9 supply of Synthroid (0.3mg.) (which a previous physician had
10 previously prescribed for goiter, but which Respondent noted was
11 no longer evident), and a prescription for Monistat-7 cream for a
12 vaginal infection that she said she had.

13 B. Respondent did not take a patient history, or
14 perform a physical examination, or confirm that there were
15 medical indications and need for the prescription drugs Mrs. J.
16 requested.^{1/} Nevertheless, he gave her prescriptions for the

17 ^{1/}Montistat-7 is Ortho Pharmaceuticals' vaginal cream
18 containing 2% miconazole nitrate. (Physician's Desk Reference
19 (1991 ed.) [hereinafter "PDR"] at pp. 421, 1592.) It exhibits
20 fungicidal activity in vitro against species of the genus
21 *Candida*, and so is indicated for the local treatment of
22 vulvovaginal candidiasis (moniliasis). (Id. at p. 1592.) The
23 accompanying Product Information warns that since Montistat-7 is
24 only effective for vulvovaginal candidiasis, a diagnosis should
25 be confirmed by KOH smears and cultures and that other pathogens
26 commonly associated with vulvovaginitis should be ruled out by
27 appropriate laboratory methods. (Id. at p. 1592.)

24 Synthroid is Boots Pharmaceuticals' levohydroxine sodium.
25 Among other things, it is used as replacement or supplemental
26 therapy in patients with hypothyroidism of any etiology, with
27 certain exceptions. (PDR at p. 690.) The accompanying Product
Information warns that treatment of patients with thyroid
hormones requires the periodic assessment of thyroid status by
means of appropriate laboratory tests, by full clinical
evaluation, or both. (Ibid.)

1 Ortho-Novum (1/50 #21) and the Synthroid (.03 mg. #100), each
2 with several refills, and for the Monistat-7. He recorded no
3 notations as to his clinical assessment of her status or about
4 following-up any of the regimens in a management plan.

5 C. On April 21, 1989, Mrs. J. went to see Respondent
6 again for a PAP smear and for a breast examination. Since she
7 was stopping her birth control pills to start a family, she was
8 also concerned about her thyroid blood level readings and so
9 wanted a thyroid function test to determine her thyroid status.
10 She also asked for a mammogram.

11 Respondent said that since she had been taking twice
12 the daily prescribed dose of Synthroid, a thyroid test would be
13 useless. He offered to renew her prescription; however, Mrs. J.
14 reminded him that he had already done so.

15 D. For the breast examination, Respondent pulled Mrs.
16 J.'s examination robe (gown) down to her hips. She asked why a
17 nurse was not present as one had been previously during similar
18 examinations with other physicians. Respondent ignored her
19 question. After three or four minutes of the breast examination,
20 Mrs. C. felt uncomfortable and that Respondent was lingering too
21

22 Ortho-Novum 1/50 is Ortho Pharmaceuticals' combination oral
23 contraceptive containing 1 mg. of the progestational compound
24 norethindrone and 0.05 mg. of the estrogenic compound mestranol.
25 It is prescribed for a 21-day regimen (or a 28-day regimen with
26 seven inert pills). (PDR at p. 1599.) The accompanying Product
27 Information warns that a complete medical history and physical
examination should be taken prior to the initiation or
reinstitution of oral contraceptives, and that these should
include special reference to blood pressure, breasts, abdomen and
pelvic organs, and relevant laboratory tests. (Id. at p. 1601.)

1 long and fondling her breasts. She insisted on a nurse being
2 present. Respondent told her that his nurses were too busy with
3 the phone and other things.

4 Respondent then tried to get Mrs. J. to lay down on the
5 examining table, telling her that she had nothing to worry about
6 because if she screamed someone would hear her. She again
7 demanded that a chaperon nurse be present. Respondent again
8 refused. When Respondent tried to completely disrobe her for the
9 examination Mrs. J. became frightened; she had never had her robe
10 completely removed for a PAP smear examination, and had always
11 had a nurse present during one. When Respondent tried to force
12 her legs apart and into the stirrups on the table, Mrs. J. jumped
13 up, put on her shorts and t-shirt, put her underclothes, socks,
14 and shoes in her purse, and ran out. The receptionist returned
15 her \$5 co-payment for the visit.

16 Gross Negligence

17 7. Section 2234 of the Medical Practice Act provides
18 that the Division of Medical Quality shall take action against
19 any licensee who is guilty of unprofessional conduct.
20 Subdivision (b) of the section provides that unprofessional
21 conduct includes gross negligence.

22 8. Respondent is subject to disciplinary action
23 pursuant to section 2234 for unprofessional conduct as defined by
24 subdivision (b) of that section because the matters set forth
25 hereinabove at paragraphs 5 and 6 indicate that he has been
26 guilty of gross negligence in the course of his treatment of
27 Darlene C. and Kathy J. More particularly, but without

1 limitation, the following aspects of Respondents actions
2 indicates that he has departed in the extreme from the standards
3 of the medical community:

4 A. Darlene C. [95]. Respondent showed gross negligence
5 in his care and follow-up of Darlene C. Respondent first
6 discovered a suspicious mass in Mrs. C.'s right breast on
7 June 30, 1987. At that time Respondent failed to make
8 appropriate inquiries of or undertake a systems review with
9 Mrs. C., such as inquiring into a family history for cancer,
10 whether she was ever pregnant, whether she smoked, whether
11 the mass was painful, and/or whether it increased in size
12 with her menses.

13 Although Respondent found no axillary masses, he was
14 specifically told by the Radiologist to whom he had referred
15 Mrs. C. for a mammogram, that there was "some axillary
16 adenopathy" visible on the right side, and although the
17 mammogram showed no evidence of malignancy, the
18 Radiologist's report specifically stated that "a negative
19 mammogram does not preclude biopsy of a clinically
20 suspicious abnormality."

21 In such a situation when a breast mass is found, the
22 following should be considered immediately: consultation
23 with a breast surgeon, ultrasonography, aspiration, and at
24 least needle or excisional biopsy. Yet despite the clear
25 possibility and warning, Respondent considered none of these
26 or make any notation for follow-up and work-up. He also did
27 not discuss with Mrs. C. a differential diagnosis, the

1 implications and possibilities, the needed diagnostic work-
2 up and the possible therapeutic options. A full eight and
3 one-half months had to elapse between the discovery of the
4 mass on June 30th and Mrs. C.'s next visit to him on March
5 8, 1988. This allowed the disease to progress before
6 definitive diagnosis and treatment were afforded.

7 In sum, it was grossly negligent of Respondent to have
8 done nothing more for Mrs. C. when the suspicious mass was
9 first found and the mammography report was received. His
10 failure to make appropriate initial inquiries and then not
11 to discuss and explore the matter with her, his failure to
12 at least have urged an immediate aspiration and/or biopsy,
13 and his failure to make any effort whatsoever to follow-up
14 the situation for eight and one-half months, each departed
15 in the extreme from the medical community standard.

16 B. Kathy J. [16]. Respondent showed gross negligence
17 in his care and treatment of Kathy J.

18 1. As a new patient, Respondent should have taken
19 a complete history from and conducted a physical
20 examination of Kathy J. Respondent failed to do so,
21 and no history or clinical assessment is recorded in
22 his records for her.

23 2. Nevertheless, Respondent gave Kathy J., at her
24 request, prescriptions for three dangerous drugs, each
25 of which requires an examination before they are
26 prescribed. Thus, before prescribing the Montistat, a
27 smear should have been taken to see if *Candida* was

1 present; before reinstituting the oral contraceptive
2 Ortho-Novum, a complete medical history and physical
3 examination should have been performed, with special
4 reference made to the blood pressure, the breasts, and
5 cervical cytology; and before prescribing the
6 Synthroid, a potent drug, Respondent should have
7 monitored Mrs. J.'s physical status and thyroid
8 function at timely intervals. (Cf., fn. 1, ante.)
9 Respondent failed to make the required examinations and
10 status assessments before prescribing the medications.
11 Further, he was unsure as to the proper strength of
12 Synthroid to prescribe.

13 3. Respondent prescribed Synthroid for Mrs. J.
14 Test results of her thyroid status, taken elsewhere, do
15 not substantiate a need for levothyroxine.^{2/}

16 4. Respondent never specified a plan of treatment
17 and case management after his initial assessment of
18 Mrs. J.'s problems.

19 In sum, Respondent's care of Kathy J. departed in the
20 extreme from the standards of the medical community in that:
21 he failed to do a complete history and physical on her as a
22 new patient; he prescribed dangerous drugs without a good
23

24 ²The diagnosis of hypothyroidism is made by finding a reduced
25 free T₄ index, and for confirmation, an increased TSH level.
26 Mrs. J.'s thyroid function levels tested by National Health
27 Laboratories on September 29, 1988, were normal: to wit, T₃
uptake @ 0.99 (normal range, .08-1.20), T₃ RIA @ 129 (normal
range 80-200 ng/dL), T₄ RIA @ 9.6 (normal range, 4.5-12.0
mcg/dL), FT.1 @ 9.5 (normal range, 5.5-11.5) and TSH @ 2.0
(normal range, 0.4-6.0 uU/mL).

1 faith medical examination; he did not appreciate the
2 implications of prescribing the Synthroid; and he failed to
3 specify a plan of treatment after an initial assessment of
4 the problem.

5 Repeated Negligent Acts

6 9. Subdivision (c) of section 2234 provides that the
7 unprofessional conduct for which the Division of Medical Quality
8 may discipline a licentiate also includes the commission of
9 repeated negligent acts.

10 10. Respondent is also subject to disciplinary action
11 pursuant to section 2234 for unprofessional conduct, now as
12 defined by subdivision (c) of that section, because the matters
13 set forth hereinabove at paragraphs 5 and 6 indicate that he has
14 been repeatedly negligent in keeping records on his patients. As
15 is more fully set forth as follows, the following aspects of
16 Respondent's actions particularly, but without limitation,
17 indicate that he repeatedly departed from the standard of the
18 medical community in connection with his record keeping on
19 Darlene C. and Kathy J.:

20 A. Darlene C. [55]. Respondent's records for Darlene
21 C. were, to say the least, scant at best. The recorded
22 information for fifteen visits spanning eight years comprise
23 but one page. They contain very brief information, if any,
24 regarding the patient's complaint, his objective findings,
25 and his plans for treatment. Respondent failed to document
26 important information, that standard medical practice
27 requires, such as signs and symptoms relevant to a

1 complaint, an adequate pertinent personal and family
2 history, his objective observations, test results, his
3 assessment or differential diagnosis, his follow-up/work-up
4 for a plan of treatment, and his perceived diagnostic and
5 therapeutic options. Respondent has acknowledged that his
6 medical records are "sloppy".

7 B. Kathy J. [¶6]. Respondent's records for Kathy J.
8 are similarly meager. They lack a personal and family
9 history, any recordation of physical examination findings,
10 and progress notes.

11 Incompetence

12 11. Subdivision (d) of section 2234 provides that the
13 unprofessional conduct for which for which a licentiate may be
14 disciplined also includes incompetence.

15 12. Respondent is also subject to disciplinary action
16 pursuant to section 2234 for unprofessional conduct, now as
17 defined by subdivision (d) of the section, because Respondent has
18 exhibited incompetence in the course of his care and treatment of
19 Darlene C. and Kathy J.. Particularly, but without limitation,
20 the following aspects of Respondent's actions indicate that he
21 has shown a lack of knowledge or ability as to medical matters:

22 A. Darlene C. [¶5]. Respondent demonstrated
23 incompetence in his care of Darlene C. and in his record
24 keeping in her case. Thus,

25 i. Incompetence In Care and Knowledge About Breast
26 Masses. Respondent's failure to make appropriate
27 inquiries of Darlene C., or to seek consultation in the

1 matter, or to take any follow-up action after he knew
2 about the breast mass from his clinical findings and
3 the Radiologist's, indicates that he was woefully
4 ignorant of and did not appreciate the clinical
5 situation presented by an abnormal and suspicious mass
6 in the breast or the patient's risk factors for breast
7 cancer that it involves. It showed a lack of knowledge
8 about the assessment of and necessary follow-up in such
9 situations of breast masses.

10 In an interview with the Board's Regional Medical
11 Consultant Respondent was uncertain as to how to work-
12 up or follow-up a breast mass (other than doing a
13 mammography). For example, he was uncertain when to
14 perform an aspiration or an excision biopsy of the
15 mass.

16 ii. Incompetence In Record Keeping (cf. ¶10A).

17 Respondent's record keeping on Darlene C. discloses a
18 lack of knowledge about the need to keep adequate and
19 meaningful records on a patient, and/or an inability to
20 keep such records. Such records should contain, inter
21 alia, notations of the complaint, an adequate history,
22 objective observations, test results, an assessment, a
23 differential diagnosis, and/or a plan of action for
24 treatment. Respondent's records had none of these. He
25 has acknowledged that his medical records are "sloppy".

26 B. Kathy J. [¶6]. Respondent similarly evidenced
27 incompetence in his care and record keeping with Kathy J.

1 Thus,

2 i. Incompetence Vis-à-Vis The Synthroid and
3 Thyroid Tests. Respondent demonstrated an utter lack
4 of knowledge about Synthroid, and its interaction with
5 a birth control medication.^{3/} He was uncertain as to
6 the proper dosage to prescribe. He also demonstrated a
7 lack of knowledge as to the basic workings of the drug,
8 its possible adverse effects and of the needed
9 precautionary and follow-up measures, such as routine
10 testing of thyroid status, when prescribing it.

11 When interviewed by the Board's Regional Medical
12 Consultant, Respondent demonstrated a lack of knowledge
13 on the basic laboratory test that is routinely used to
14 assess thyroid function/status. For example, he did
15 not know how to correlate or extrapolate from
16 differences in results in hypothetical cases. Further,
17 Respondent indicated that he does not need to perform
18 thyroid function tests on patients taking thyroid
19 medications to determine their response, because
20 instead of doing the laboratory tests he will stop the
21 intake of medication and observe the clinical effect on
22 the patient, and start the medication again if

23 ³ The accompanying Product Information warns that special
24 precautions must be taken in evaluating patients receiving
25 thyroid replacement therapy who also are taking an estrogen
26 containing oral contraceptive because the latter may interfere
27 with and affect their laboratory thyroid tests. (PDR at p. 691,
1601.) In addition, a patient without a functioning thyroid
gland who is on thyroid replacement therapy may need to increase
her thyroid doses when an estrogen-containing oral contraceptive
is also taken. (Id. at p. 691.)

1 necessary.

2 ii. Not Having A Chaperon Present When Requested
3 When Performing a Breast or Pelvic Examination.

4 Respondent should have had a nurse, receptionist, or
5 other female attendant in the room when he performed
6 the breast and pelvic [PAP] examination on Mrs. J., on
7 April 21, 1989, especially when she asked for such a
8 chaperon to be present. His failure to do so indicates
9 a lack of knowledge about a physician's obligations
10 when performing such examinations on female patients.

11 iii. Mrs. J.'s Records (cf. ¶10B). Respondent's
12 record keeping on Kathy J. discloses a similar lack of
13 knowledge about the need to keep adequate and
14 meaningful records on a patient, and/or an inability to
15 keep such records. His records contain no adequate
16 history, no notations as to his objective observations,
17 test results, an assessment, a differential diagnosis,
18 and/or a plan of action for treatment. Again,
19 Respondent has acknowledged that his medical records
20 are "sloppy".

21 Furnishing A Dangerous Drug Without A Prior Examination

22 13. Section 2242 of the Medical Practice Act provides
23 that prescribing, dispensing, or furnishing dangerous drugs as
24 defined in section 4211 of the Code, without a good faith prior
25 examination and medical indication therefor, constitutes
26 unprofessional conduct.

27 14. Respondent is also subject to disciplinary action

1 pursuant to section 2234 for unprofessional conduct because the
2 matters set forth hereinabove at paragraph 6A&B and 8B2 indicate
3 that he has also demonstrated unprofessional conduct within the
4 meaning of section 2242, in that he prescribed Montistat, Ortho-
5 Novum, and Synthroid, for Mrs. J., all dangerous drugs as defined
6 by section 4211, without having made the necessary good faith
7 prior medical examination to establish a need or medical
8 indication for them. (Cf. fn. 1, ante.) Further, Mrs. J.'s
9 thyroid status was such as to not substantiate a need for the
10 Synthroid (levothyroxine).

11 Sexual Misconduct

12 15. Section 726 of the Code essentially provides that
13 the commission of any act of sexual abuse or misconduct with a
14 patient in the course of one's practice constitutes
15 unprofessional conduct and grounds for disciplinary action
16 against a physician.^{4/}

17 16. Respondent is subject to disciplinary action
18 pursuant to sections 2234 and 726 because the matters set forth
19 at paragraph 6D, show that he has demonstrated unprofessional
20 conduct by committing an act of sexual abuse and misconduct
21 against a patient in the course of his practice. More
22 particularly, as recapitulated here, the circumstances are as
23 follows:

24
25 "Section 726 reads as follows: "The commission of any act of
26 sexual abuse, misconduct, or relations with a patient, ... which
27 is substantially related to the ... functions or duties of the
occupation for which a license was issued constitutes
unprofessional conduct and grounds for disciplinary action for
any person licensed under [division 2 of the Code]...."
Physicians are licensed under Division 2.

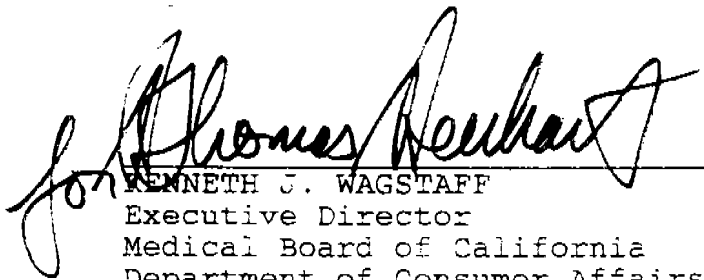
1 During the course of his examination of Mrs. J. on
2 April 21, 1989, Respondent was oblivious to her fears in the
3 situation and refused to allay them by having a nurse
4 chaperon present. He fondled her breasts, tried to take her
5 examination robe (dressing gown) completely off, and
6 attempted to force her legs apart into the stirrups of the
7 examining table. His actions frightened her. He repeatedly
8 ignored and refused her early and continuous frightened
9 entreaties to have a nurse present during the examination.

10 WHEREFORE, Complainant requests that a hearing be held
11 on the matters alleged herein, and that following said hearing,
12 the Board issue a decision:

13 1. Revoking or suspending Physician's and Surgeon's
14 Certificate No. G006368 heretofore issued to respondent David Van
15 Every, M.D.; and/or

16 2. Taking such other and further action as the Board deems
17 meet in the premises.

18 DATED: June 11, 1992

19 
20 KENNETH J. WAGSTAFF
21 Executive Director
22 Medical Board of California
23 Department of Consumer Affairs
24 State of California

25 Complainant
26
27